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MODEL COMMUNITY NOISE CONTROL ORDINANCE

September 1975

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This report contains a model ordinance for use by cities and counties in the development of noise control ordinances tailored to local conditions and goals. It is a comprehensive, performance-standard noise ordinance intended to overcome enforcement problems associated with the outmoded nuisance law approach to noise control. This report contains sections on the control of noise from both stationary and mobile sources and includes land use planning provisions. A preamble gives important explanatory information for certain ordinance sections.

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PREPARED BY:

National Institute of Municipal
Law Officers
in conjunction with
The U.S. Environmental Protection Agency

This document has been approved for general availability. It does not constitute a standard, specification, or regulation.

FOREWORD

In recent years, interest in noise control legislation on the local level has increased greatly, and the need for an up-to-date, comprehensive model law has become evident. Cities and counties throughout the country have become aware that ordinances relying solely on the nuisance law approach are inadequate to control today's noise problems, and they have sought an effective alternative. This is a performance-standard model noise ordinance which is intended to be a basic tool for use by communities of various sizes in the development of noise control ordinances tailored to their specific local conditions and goals.

This model ordinance was prepared by the National Institute of Municipal Law Officers in conjunction with the Environmental Protection Agency. Representatives of several State and local governments also assisted in the ordinance preparation. We would like to express our thanks to all those who contributed to the drafting and review of this model ordinance.

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PREAMBLE TO THE MODEL COMMUNITY NOISE CONTROL ORDINANCE

INTRODUCTION

Purpose

The Model Community Noise Control Ordinance (model ordinance) is intended to be a basic tool which communities, both large and small, can use to construct noise control ordinances suited to local needs and conditions. The complete model ordinance, including optional provisions, is perhaps most suitable for larger communities, with populations of about 100,000 or more. Smaller communities and large communities with limited resources may wish to adopt only those provisions which address their most pressing noise problems. It is important that the community ensure that all provisions adopted are realistic in relation to local needs and conditions; that all provisions are consistent with one another, with other local law, and with State and Federal law; and, finally, that all provisions are clear and otherwise well drafted so that enforcement problems will be minimized.

Background

This model ordinance is an outgrowth of the Federal Noise Control Act of 1972 (49 U.S.C. § § 4901 *et seq.*) and the tremendous increase in interest regarding noise abatement and control which the Act has precipitated. Many existing community noise ordinances are based on outmoded model ordinances and/or the common law approach to noise control which relies exclusively on difficult to enforce nuisance provisions. While the model ordinance preserves common law with Article VI provisions prohibiting noise disturbances, it also contains definitive performance standards for motor vehicles and other sources of community noise. The increase in reliable monitoring equipment available to local governments, coupled with definitive standards incorporated into local noise control ordinances, should result in ordinances which are more easily enforceable than many have been in the past.

It is anticipated that an analagous model ordinance will form part of a workbook on community noise abatement and control to be published by the U.S. Environmental Protection Agency during late 1976. In addition to containing the model ordinance (perhaps with

discussions of a number of alternative provisions), the workbook may contain chapters on the legal basis of noise control, the health effects of noise and various enforcement approaches.

Although the model ordinance will stand alone as a legal document, for proper enforcement the City/County must additionally have a code of recommended practices or rules and regulations which give general specifications for sound measuring equipment and measurement methodology. This document should also provide detailed procedures for measurements to be taken for certain provisions of the ordinance, such as motor vehicles and stationary sources. To assist communities in the development of a code of recommended practices, EPA is preparing a model code which, when completed, will be made available to recipients of the model ordinance.

Interrelationship of Various Provisions

An overview of the model ordinance can most readily be obtained by reading the List of Provisions. When a community determines which activities it wishes to regulate, the appropriate model provision or provisions can be located by referring to this list.

A glance through the List of Provisions suggests that certain acts may be prohibited by more than one provision. For example, use of a noisy go-cart could violate Section 9.2 ("Recreational Vehicles Operating Off Public Rights-Of-Way"), as well as Section 6.1 (Noise Disturbances). It may be that a community desires such multiple coverage. In this case, enforcement against the owner or operator of a noisy go-cart would probably come under the provision more easily enforced, but could come under both provisions violated, at the discretion of the enforcement agency. If a community does not desire such multiple coverage, it can either omit certain provisions or it can exempt acts covered by other provisions from multiple coverage. Such modifications deserve careful consideration, however, so that they do not modify the ordinance more than desired or otherwise jeopardize enforcement.

GENERAL PROVISIONS

Policy Regarding Levels

In this model ordinance, recommended values for sound levels in the performance standards have been omitted in most cases. Suggested times for the curfews on the hours of the conduct of activities or the operation of equipment have also generally been omitted. The reason for these omissions is that the drafters of the ordinance feel that there is no single number that can be chosen for each provision that would be appropriate for all types of

communities. Each community has its own set of environmental, health, economic and other goals it wishes to attain. Each community also has its own configuration of noise sources and their impact which it wishes to control. The level and extent of such control is fully within the purview of local decision. Of course, localities will wish to consider the technical practicality and economic reasonableness of sound levels chosen. However, in the regulation of noise pollution, the protection of public health and welfare is the major legal basis for control and must be carefully considered in the determination of performance standard noise levels and hours of curfew. For an indication of national maximum noise exposure guidelines, consult *Information on the Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety* (U.S. Environmental Protection Agency, March 1974).

Preemption

Under the Noise Control Act of 1972 (49 U.S.C. § § 4901 *et seq.*), certain areas of local authority will become preempted on the effective date of regulations developed by the U.S. Environmental Protection Agency pursuant to Sections 6, 17 and 18 of this Act. In this discussion, we will present the scope of Federal preemption and indicate the provisions of the model ordinance which were drafted wholly or partially to respond to the issue of preemption.

An overall requirement to monitor Federal preemptive regulations and to respond to them in the local noise ordinance is contained in Section 4.3.6 (b). This subsection provides that, at such time as Federal regulations become effective which are by law preemptive of the laws of State and local governments, the Environmental Protection Office(r)/Noise Control Office(r) (EPO/NCO) shall review the provisions of the local ordinance which may be affected and make appropriate recommendations for changes to the city council/legislative body.

The purposes of including such a provision in this ordinance are to facilitate the coordination of the local noise control efforts with the Federal noise program and to reduce the possibility of defendants raising Federal preemption as a defense to charges of local law violations.

With regard to the scope of preemption, the preemptive provision of Section 6 of the Noise Control Act differs considerably from those of Sections 17 and 18. The Section 6 provision is relatively narrow, preempting local laws covering new product noise emission levels which are directed at the manufacture or sale of such products. The preemptive provisions of Sections 17 and 18 are very broad, preempting local noise laws which affect the operation of interstate motor and rail carrier vehicles.

In Section 6, subsection 6(e)(1) provides that, after the effective date of an EPA regulation prescribing noise emission levels for a specific new product or component, no State or political subdivision thereof may adopt or enforce with respect to that particular new product or component any law or regulation which sets a noise emission limit on such product (or component) enforceable against the manufacturer of the product, applicable at the time of sale, unless such law or regulation is identical to the Federal regulation. Thus, the preemption is against State and local laws which regulate the noise levels of a new product (i.e., a product which has not yet been sold to the first retail purchaser) and which, at any time, impact the manufacturer of the product.

State and local governments, under subsection 6(e)(2), retain authority to control products by all other available means. This subsection states that nothing in this section precludes or denies the right of State or local governments to establish and enforce controls on environmental noise and sources thereof through the licensing, regulation, or restriction of the use, operation, or movement of any product or combination of products.

Thus, although a local government may not enforce a nonidentical local law regarding the noise level of an EPA-regulated new product which affects the manufacture or sale of such product, the local government may regulate the product noise impact through regulations enforceable against the owner or operator of the product by providing, for example, maximum noise levels for operation, curfews on operation, prohibition of use in a residential neighborhood or hospital zone, or requirements for periodic inspection and licensing of the product.

Broader preemptive coverage is found in Sections 17(c)(1) and 18(c)(1). These sections provide that, after the effective date of an EPA regulation applicable to noise emissions from interstate rail or motor carriers, no State or political subdivision thereof may adopt or enforce any standard applicable to the same noise source unless such standard is identical to the Federal standard. However, Sections 17(c)(2) and 18(c)(2) provide that nothing in these sections shall diminish or enhance the right of State and local governments to establish and enforce standards or controls on levels of environmental noise or to control, license, regulate, or restrict the use, operation, or movement of any regulated product if two conditions occur:

1. the EPA Administrator, after consultation with the Secretary of the Department of Transportation, determines that such local law is necessitated by special local conditions, and

2. if he determines that such local law is not in conflict with the EPA regulations.

Thus, on the effective date of the EPA regulations under Section 18 (October 15, 1975) and Section 17 (December 31, 1976), local governments should review any ordinance provisions applicable to noise emissions resulting from the use or operation of motor vehicles with

a gross vehicle or combination weight rating of greater than 10,000 lbs. operated by an interstate motor carrier and of interstate surface railroad locomotives and cars. Local regulations providing standards on noise emissions resulting from operations subject to Federal regulations must be identical to the Federal regulation. Such identity applies not only to the standard but also to the core measurement methodology which defines the standard. Non-identical standards may not be enforced, and should be declared ineffective, as of the effective date of the Federal regulation. For this reason, Section 18 standards have been incorporated into Table II of Section 9.1 in the model ordinance. The appropriate measurement methodology should be incorporated into the community code of recommended practices.

In general, we can classify the preemptive effect of these sections on local law into three categories. First, any local law which sets noise emission levels for interstate motor vehicles and rail locomotives and cars must be identical to the Federal standard. No special local condition or other factor can exempt this requirement. Second, local laws which regulate or restrict the use, operation, or movement of interstate motor rail carriers by such means as curfews and truck routes (see Section 4.3.4, Truck Routes and Transportation Planning) will not be subject to preemption if (1) the principal purpose of such regulation is not to control noise, or (2) the principal purpose is to control noise but the regulation has been approved by the EPA as necessitated by special local conditions and not in conflict with Federal regulations. For example, truck routes designated solely on the basis of noise must be submitted to EPA for determination of a special local condition. Truck routes based on additional factors, such as the safety of children, maximum load on street surfaces, etc., will not need EPA approval. Third, general noise regulations, such as the property line noise emission standards of Article VIII, will not be affected by these preemption provisions except in rare cases. Thus, the property line levels may be applied to noise emissions caused by interstate motor carrier vehicles at a loading terminal so long as means of abatement are possible which do not require controlling the noise emission level of the motor vehicle itself. Such other means of abatement can include, for example, installation of noise barriers at the perimeter of the terminal and creation of buffer zones of land between the terminal and the noise-impacted areas.

Hearing Board and Advisory Council

A City/County with a large EPO/NCO may prefer to utilize a Hearing Board (or an administrative court) to hear cases regarding ordinance violations. Under this approach, the Hearing Board would decide the case and determine the penalty. Local courts would be utilized in appeals of the decisions of the board. This approach avoids overburdening existing courts.

The City/County may also wish to use a Hearing Board to make determinations on Special Variances (Section 7.2) and Variances for Time to Comply (Section 7.3). This would free EPO/NCO personnel to perform other tasks under the ordinance. However, the EPO/NCO could still be consulted on technical matters.

If the City/County decides to have a Hearing Board, the terms of existence and operation of the Board should be specified in the ordinance.

A Noise Control Advisory Council should also be considered by the City/County. The functions of this council could include providing (1) advice on development of the noise control program; (2) recommendations on which provisions of the model ordinance should be included in the City/County ordinance; (3) recommendations on sound level values and curfew periods for the various provisions; and (4) stimulation of public interest on noise abatement. This Council could also be responsible for writing the periodic reports, specified in Section 4.3.9, concerning the progress of the local noise control program.

SPECIFIC PROVISIONS

Article III – Definitions

1. Section 3.2.16, *Definition of "Motorboat"*

A community which serves as an international port may wish to explicitly exclude vessels in international commerce from the definition of motorboat, since many such vessels would be effectively prohibited from using the port (under Section 6.2.15, Motorboats).

2. Section 3.2.29, *Definition of "Sound"*

The term "sound" is generally used as the operative word in this ordinance rather than the term "noise". This is to avoid the problem of associating "noise" with a sound that is "disturbing" or "unwanted", with the attendant possibility that in order to prove a violation of the ordinance, proof must be given that the sound had indeed been "disturbing" or "unwanted". Because the substantive provisions of the ordinance have been narrowly drawn and often contain objective criteria, proof of an additional subjective element is unnecessary.

3. Section 3.2.22, *Definition of "Person"*

The definition of person does not include Federal agencies and departments. This is because legal decisions have not yet determined the extent of a locality's authority to bring action against the Federal government for noise control violations.

Section 4 of the Noise Control Act of 1972 requires that all departments, agencies, and instrumentalities of the executive, legislative, and judicial branches of the Federal Government comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements. The Federal Courts of Appeals, deciding cases under identical language in the Clean Air Act, have disagreed as to whether this language extends to administrative as well as substantive requirements. See *State of Alabama v. Seeber*, 502 F. 2d. 1238 (5 Cir. 1974); *Commonwealth of Kentucky v. Ruckelshaus*, 497 F. 2d. 1172, (6 Cir. 1974). *Kentucky v. Ruckelshaus* is pending before the Supreme Court, and a resolution of the issue is likely. Further questions exist as to whether a State or local government can bring an action against the Federal Government for violations of their noise control laws, regulations and ordinances. Accordingly, the key definition of "person" in the model ordinance, which serves as an applicability section, does not include the Federal Government.

In the absence of such specificity, Section 4 of the Noise Control Act continues to require that the Federal Government comply with the local ordinance. However, it is left to each community to determine the position it will take with respect to the relevant issues, such as whether the Federal Government must comply with administrative provisions, and whether penalties, orders, and enforcement actions will be directed at the Federal Government under Article XI (Enforcement).

Article IV – Powers and Duties of the (Environmental Protection)/(Noise Control) Office(r)

1. Resolving Interdepartmental Conflicts

Section 4.2.4 (Review of Actions of Other Departments); Section 4.2.5 (Review of Public and Private Projects), Section 4.3.4 (Truck Routes and Transportation Planning) and Article V (Duties and Responsibilities of other Departments) have the potential of causing interdepartmental conflicts since there is shared responsibility. The community may wish to specify in the ordinance a method for resolving such conflicts, perhaps by authorizing the city council, county board of supervisors, mayor, etc., to negotiate differences and make a final decision.

2. Education

Section 4.2.2 authorizes the (Environmental Protection)/(Noise Control) Office(r) to educate the public on methods of controlling noise and on the provisions of the ordinance. The EPO may wish to exercise caution, however, in providing specific advice on solving a particular noise problem. For instance, if the EPO were to advise a commercial establishment on a method of reducing noise from its air conditioning unit and this method failed to be effective, the commercial establishment may try to use this fact as a defense in any action brought against it by the EPO. The EPO officer should use his discretion in handling matters of this type.

3. Review of Public and Private Projects

Section 4.2.5 grants the EPO the power to review public and private projects over which another department has authority in order to determine whether they will comply with the ordinance. This applies to such matters as licensing a race track, approving a housing project, or granting a permit for a construction site, if required to be approved by a department other than that of the EPO/NCO and if likely to create sound levels or sound exposures in violation of the ordinance.

Some communities may wish to expand this section to authorize the EPO to recommend to other departments appropriate modifications to projects if the EPO believes such projects will violate the ordinance or to allow him veto power over projects significantly impacting the noise environment.

This provision does not set criteria for determining whether a proposed project must be reviewed by the EPO/NCO. If the City/County wishes the EPO/NCO to review every proposed project, such criteria are not necessary, but this policy may create an unnecessarily large burden on the EPO/NCO. If the City/County wishes to limit situations where the proposed project is subject to noise impact review, criteria can be either included in the language of this provision, or the EPO/NCO can develop criteria in consultation with affected departments. Such criteria may include, for example, minimum monetary or time limits for the review of activities or specification of the types of activities which are likely to produce sound in violation of the ordinance.

4. Inspections

Section 4.2.6 concerns inspections. To be constitutionally permissible, administrative searches or inspections conducted by municipal inspectors on private property must be made using a warrant procedure (*Camara v. Municipal Court*, 387 U.S. 523 (1967); *See v. Seattle*, 387 U.S. 511 (1967)). Thus, if a private property holder refuses to allow his premises to be inspected by a City/County official, the official must obtain a search warrant for the premises before he may inspect them. The Court in *See* also held that there is no distinction between the rights of a residential property holder and those of a commercial property holder concerning searches or inspections. Both types of property are thus treated the same in Section 4.2.6(a).

Violations of Article VIII (Noise Levels by Receiving Land Use) and most Article VI (Prohibited Acts) violations can be determined without an inspection on the premises on which the sound source is situated, so a search warrant is not needed in these situations.

Article VIII – Sound Levels by Receiving Land Use (Defining Land Use Districts)

Article VIII sets property line sound limits for the broad receiving land use categories of residential, commercial and industrial. Many communities are employing this type of quantitative limit to provide stronger legal control over undesirable sound levels than is attainable with an ordinance containing only nuisance provisions.

If the community land use/zoning code accurately reflects the actual use of the land, then the designations used by the city for zoning categories may effectively be plugged into the three Article VIII categories (with the corresponding definitions placed in Article III). On the other hand, if there are numerous discrepancies between the way the land is zoned and the way it is actually used (e.g., commercial establishments in a residential zone), or if there are large tracts of unzoned land, the community may prefer to base property line limits on the actual *use* of the land. This would provide greater protection for impacted properties.

A related matter to be considered in controlling property line noise is that of the occasional non-conforming land use. An example is the case of a single residence located in an industrial area. It may not be possible for several manufacturers impacting the residence to lower their noise levels to meet the limit specified for residential areas. Situations of this type will require some discretion in enforcement.

Figures 1, 2, and 3 summarize graphically the property line levels set by current municipal noise ordinances.

Article X – Land Use

The basic purpose of the Article X land use planning provisions is to ensure that no new residences, institutions or recreational areas are constructed in high noise areas, as determined by the appropriate sections. Although the Article was drafted to stand independently from the existing community land use planning or zoning systems, it is important for a community considering enactment of this Article to study the interaction of Article X with the land use planning and/or zoning laws and to reconcile them where necessary. It may be better, for example, to enact Article X as an amendment to an existing land use law rather than as a part of the noise control ordinance. Furthermore, because this Article effectively rezones land subject to its provisions, the community may want or need to take special measures before enactment of this Article. These may include a general identification of the areas that will be affected by these provisions.

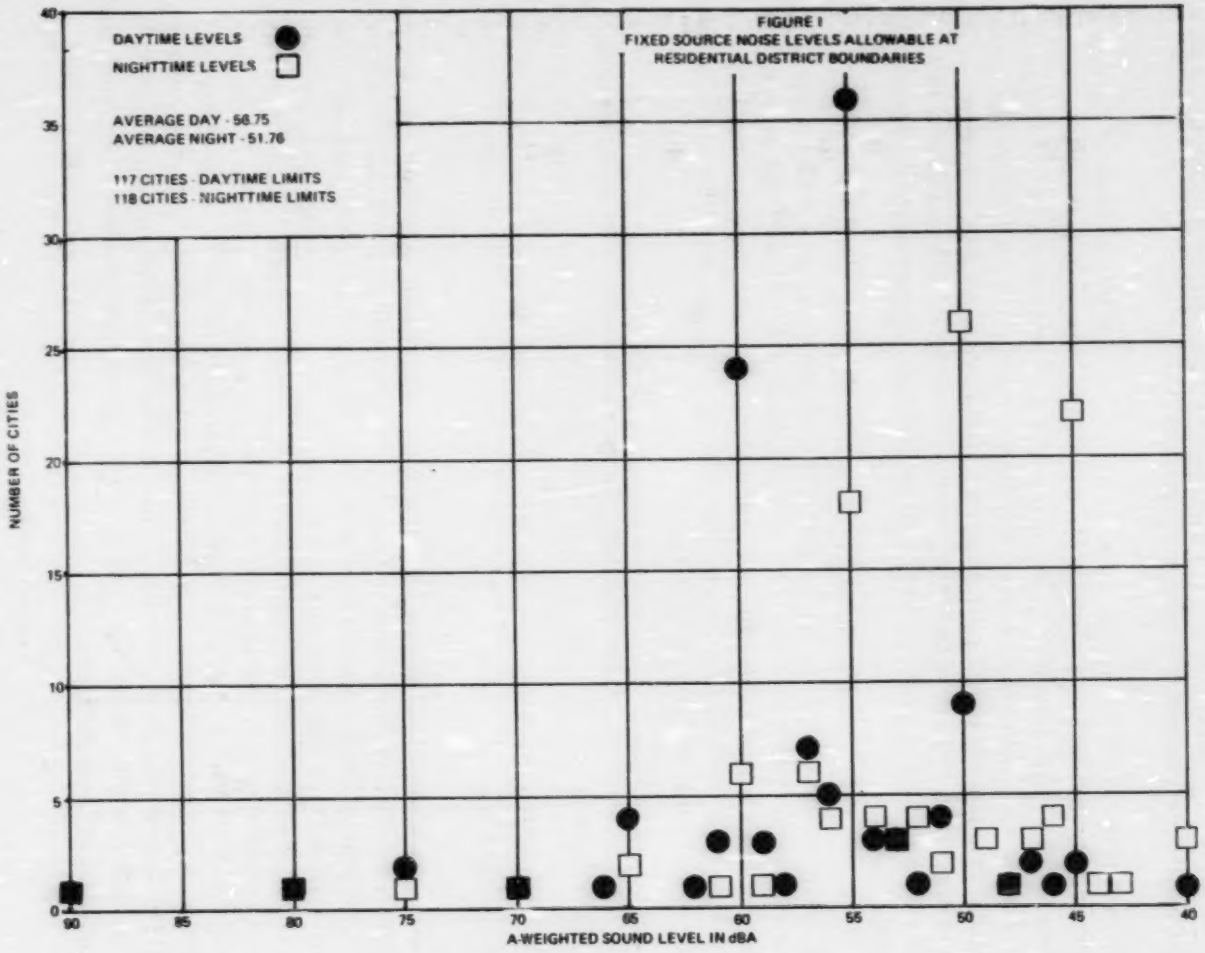

Figure 1. Fixed Source Noise Levels Allowable at Residential District Boundaries

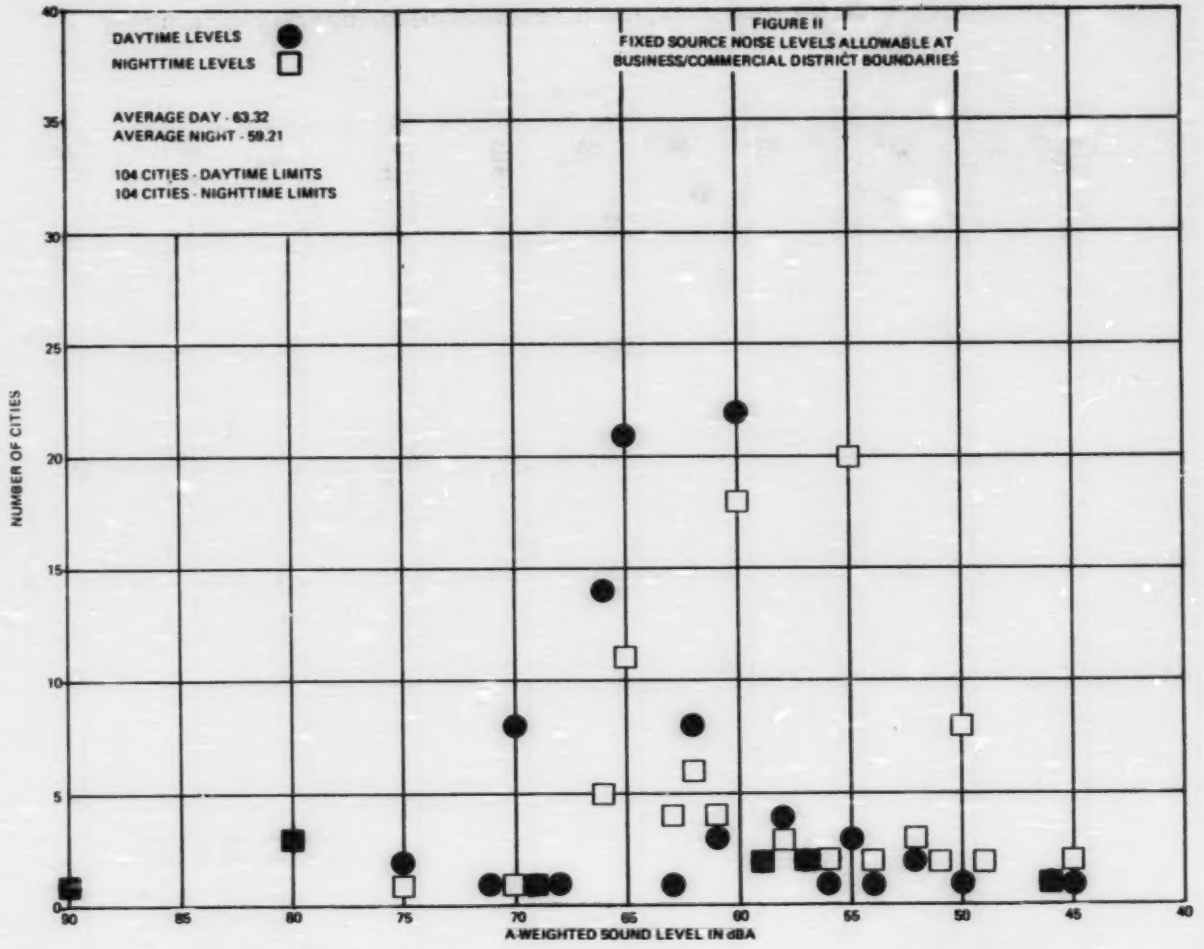

Figure 2. Fixed Source Noise Levels Allowable at Business/Commercial District Boundaries

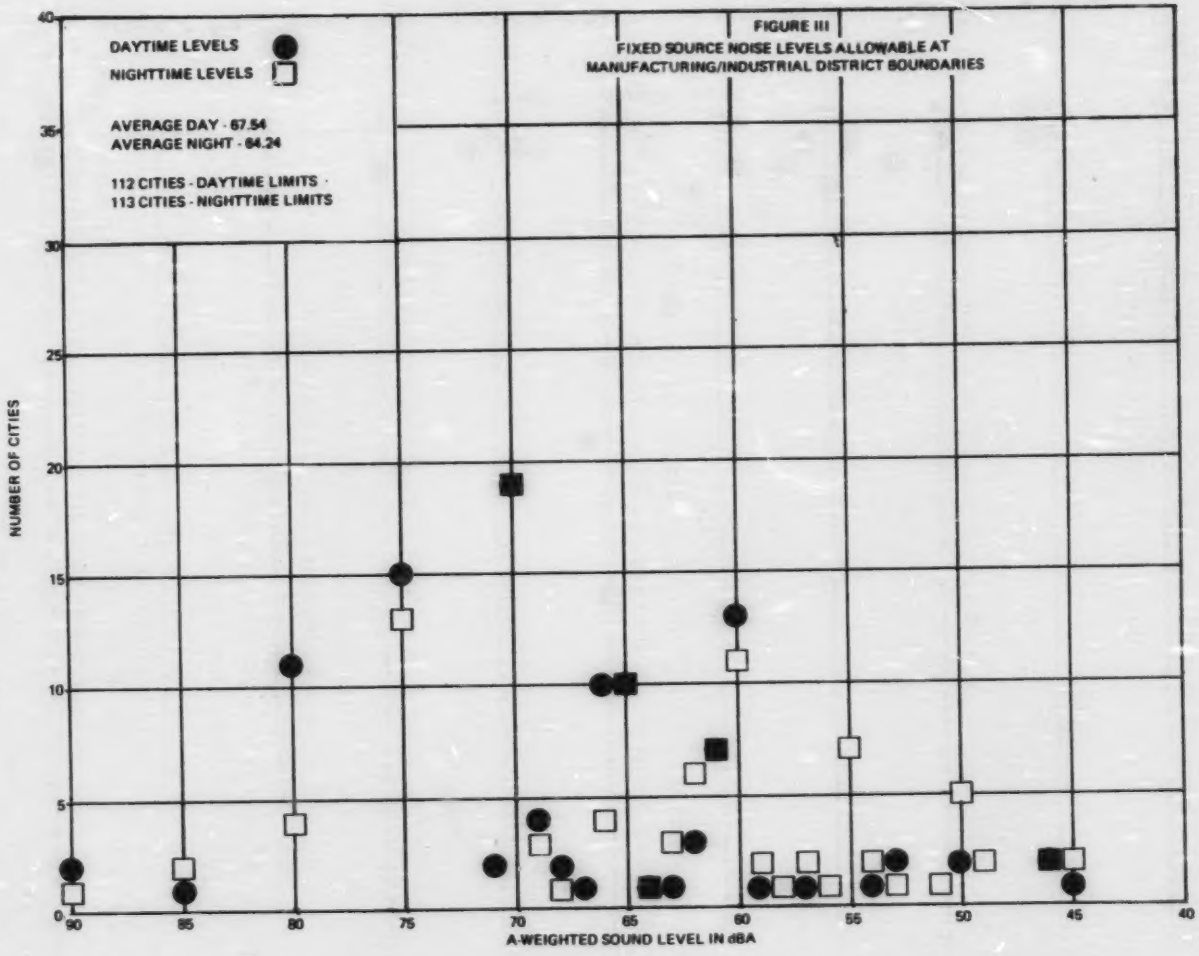

Figure 3. Fixed Source Noise Levels Allowable at Manufacturing/Industrial District Boundaries

Article XI – Enforcement

Provisions in this Article are more likely to need revision to conform with local law than other provisions of the model ordinance. For example, the City/County may wish to make violations of the ordinance "infractions," similar to minor traffic violations, rather than misdemeanors, due to the stigma attached to such violations.

The City/County may wish to ensure that the public is reasonably well-informed of activities prohibited by the ordinance before fully effectuating its enforcement program. For example, the City/County may utilize a discretionary policy of issuing an abatement order for a first violation, followed by a citation for the original violation, if the abatement order is not complied with. This approach is provided for in Section 11.2 (Abatement Order), and would be used for violations that are presumed to be unintentional. The EPO/NCO may wish to establish guidelines for use of the abatement order, indicating, for example, appropriate types of violations for which an order may be issued and maximum time period of an order.

The enforcement scheme contained in this ordinance also includes a provision for citizen suits (Section 11.5). The advantage of the citizen suit approach is that many violations of the ordinance which the EPO/NCO has insufficient resources to prosecute can be legally dealt with by persons affected by the violation. Provisions under which one citizen can sue another are limited to those listed in Table VI, to minimize the possibility of "harassment" suits.

Section 11.3 (Notice of Violation) is incomplete in several respects for easy adaptation to the local law of the particular City/County.

Section 11.4 (Immediate Threats to Health and Welfare) provides the EPO/NCO with the authority to force immediate abatement of sources producing sound intensities that not only violate the ordinance but are also unquestionably harmful to the health of the public exposed to them. The sound levels regulated (see Tables IV and V) are deliverately set high, because there is no procedure in this provision for balancing public health with economic or other considerations; public health is the sole determinant. The health and welfare criterion for the levels set is a temporary threshold shift of 30 dB at 4 kHz.

Subsection (b) limits the applicability of this provision to impacts on members of the general public who are involuntarily exposed to the sound. Employee exposures at their workplace are exempted because employee sound exposure levels are regulated under the Occupational Safety and Health Act (29 U.S.C. § § 669 *et seq.* (1970)).

Severe sanctions for noncompliance with the order are provided for in subsection (d), so that the sound will not continue to be a detriment to public health. If the order is unjustified, a court can invalidate or suspend it soon after the order is issued, in a mandamus type proceeding. This remedy is contained in subsection (c), which may need to be modified to conform with local procedure.

Under Section 11.6 (Other Remedies), common law and statutory remedies previously used to regulate excessive sound will still remain available. It is desirable to retain such remedies to allow private persons the possibility of recovering damages or other remedies for the effects of excessive sound since private recovery is not provided for under the ordinance. The ordinance is intended to expand existing sound control law, not to limit it.

FORMAT

In reading the model ordinance it is essential that certain typographical symbols and format be understood. Several brief rules have been followed in drafting. These are:

1. The material contained in square brackets [ ] is optional, depending on the needs and conditions of a given community. (Of course, communities developing ordinances may decide that any given provision should be deleted.)

2. Parentheses ( ) are generally used to designate alternative choices, but in some cases contain explanatory information, depending on the context.

3. Blanks _____ must be filled in by the community with appropriate information.

4. Wherever the term EPO/NCO appears, the title of the community's lead noise enforcement agency or official should be inserted.

MODEL COMMUNITY NOISE CONTROL ORDINANCE

ARTICLE I SHORT TITLE

This ordinance may be cited as the "Noise Control Ordinance of the (City/County) of _____."

ARTICLE II DECLARATION OF FINDINGS AND POLICY; SCOPE

2.1 DECLARATION OF FINDINGS AND POLICY

WHEREAS excessive sound and vibration are a serious hazard to the public health and welfare, safety, and the quality of life; and WHEREAS a substantial body of science and technology exists by which excessive sound and vibration may be substantially abated; and, WHEREAS the people have a right to and should be ensured an environment free from excessive sound and vibration that may jeopardize their health or welfare or safety or degrade the quality of life; and, NOW, THEREFORE, it is the policy of the (City/County) of _____ to prevent excessive sound and vibration which may jeopardize the health and welfare or safety of its citizens or degrade the quality of life.

2.2 SCOPE

This ordinance shall apply to the control of all sound and vibration originating within the limits of the (City/County) of _____.

ARTICLE III DEFINITIONS

3.1 TERMINOLOGY

All terminology used in this ordinance, not defined below, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

3.2.1 "A-WEIGHTED SOUND LEVEL" MEANS

The sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

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3.2.2 "COMMERCIAL AREA" MEANS

((As defined in the community (comprehensive plan)/(zoning ordinance)).

3.2.3 "CONSTRUCTION" MEANS

Any site preparation, assembly, erection, substantial repair, alteration, or similar action, but excluding demolition, for or of public or private rights-of-way, structures, utilities or similar property.

3.2.4 "DAY-NIGHT AVERAGE SOUND LEVEL (L_{dn})" MEANS

The 24-hour energy average of the A-weighted sound pressure level, with the levels during the period 10:00 p.m. to 7:00 a.m. the following day increased by 10 dBA before averaging.

3.2.5 "DECIBEL (dB)" MEANS

A unit for measuring the volume of a sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

3.2.6 "DEMOLITION" MEANS

Any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

3.2.7 "EMERGENCY" MEANS

Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

3.2.8 "EMERGENCY WORK" MEANS

Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

3.2.9 "ENVIRONMENTAL PROTECTION OFFICE(R)/NOISE CONTROL OFFICE(R) (EPO/NCO)" MEANS

The municipal agency or department having lead responsibility for this ordinance. (If no such agency is designated, the term shall mean the municipal official having lead responsibility for this ordinance.)

3.2.10 "EQUIVALENT A-WEIGHTED SOUND LEVEL (L_{eq})" MEANS

The constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. [For the purposes of this ordinance, a time period of 24 hours shall be used, unless otherwise specified.]

3.2.11 "GROSS VEHICLE WEIGHT RATING (GVWR)" MEANS

The value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

3.2.12 "IMPULSIVE SOUND" MEANS

Sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms.

3.2.13 "INDUSTRIAL AREA" MEANS

((As defined in the community (comprehensive plan)/(zoning ordinance)).

3.2.14 "MOTOR CARRIER VEHICLE ENGAGED IN INTERSTATE COMMERCE" MEANS

Any vehicle for which regulations apply pursuant to Section 18 of the Federal Noise Control Act of 1972 (P.L. 92-574), as amended, pertaining to motor carriers engaged in interstate commerce.

3.2.15 "MOTOR VEHICLE" MEANS

(As defined in the motor vehicle code of the State)/(Any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, go-carts, snow-mobiles, amphibious craft on land, dune buggies, or racing vehicles, but not including motorcycles.)

3.2.16 "MOTORBOAT" MEANS

Any vessel which operates on water and which is propelled by a motor, including, but not limited to, boats, barges, amphibious craft, water ski towing devices and hover craft.

3.2.17 "MOTORCYCLE" MEANS

(As defined in the motor vehicle code of the State)/(An unenclosed motor vehicle having a saddle for the use of the operator and two or three wheels in contact with the ground, including, but not limited to, motor scooters and minibikes.)

3.2.18 "MUFFLER OR SOUND DISSIPATIVE DEVICE" MEANS

A device for abating the sound of escaping gases of an internal combustion engine.

3.2.19 "NOISE" MEANS

Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

3.2.20 "NOISE DISTURBANCE" MEANS

Any sound which (a) endangers or injures the safety or health of humans or animals, or (b) annoys or disturbs a reasonable person of normal sensitivities, or (c) endangers or injures personal or real property.

3.2.21 "NOISE SENSITIVE ZONE" MEANS

Any area designated pursuant to Section 4.2.10 of this ordinance for the purpose of ensuring exceptional quiet.

3.2.22 "PERSON" MEANS

Any individual, association, partnership, or corporation, and includes any officer, employee, department, agency or instrumentality of a State or any political subdivision of a State.

3.2.23 "POWERED MODEL VEHICLE" MEANS

Any self-propelled airborne, waterborne, or landborne plane, vessel, or vehicle, which is not designed to carry persons, including, but not limited to, any model airplane, boat, car, or rocket.

3.2.24 "PUBLIC RIGHT-OF-WAY" MEANS

Any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a governmental entity.

3.2.25 "PUBLIC SPACE" MEANS

Any real property or structures thereon which are owned or controlled by a governmental entity.

3.2.26 "PURE TONE" MEANS

Any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of this ordinance, a pure tone shall exist if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetric average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies of 500 Hz and above and by 8 dB for center frequencies between 160 and 400 Hz and by 15 dB for center frequencies less than or equal to 125 Hz.

3.2.27 "REAL PROPERTY BOUNDARY" MEANS

An imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

3.2.28 "RESIDENTIAL AREA" MEANS

((As defined in the community (comprehensive plan)/(zoning ordinance)).

3.2.29 "RMS SOUND PRESSURE" MEANS

The square root of the time averaged square of the sound pressure, denoted P_{rms}.

3.2.30 "SOUND" MEANS

An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

3.2.31 "SOUND LEVEL" MEANS

The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4 - 1971, or the latest approved revision thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.

3.2.32 "SOUND LEVEL METER" MEANS

An instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighting networks used to measure sound pressure levels.

3.2.33 "SOUND PRESSURE" MEANS

The instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.

3.2.34 "SOUND PRESSURE LEVEL" MEANS

20 times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference pressure of 20 micropascals (20×10^{-6} N/m^2). The sound pressure level is denoted L_p or SPL and is expressed in decibels.

3.2.35 "VIBRATION" MEANS

An oscillatory motion of solid bodies of deterministic or random nature described by displacement, velocity, or acceleration with respect to a given reference point.

3.2.36 "WEEKDAY" MEANS

Any day Monday through Friday which is not a legal holiday.

ARTICLE IV POWERS AND DUTIES OF THE (ENVIRONMENTAL PROTECTION)/(NOISE CONTROL) OFFICE(R)

4.1 LEAD (AGENCY/OFFICIAL)

The noise control program established by this ordinance shall be administered by (title of municipal agency or lead official).

4.2 POWERS OF THE (ENVIRONMENTAL PROTECTION)/(NOISE CONTROL) OFFICE(R)

In order to implement and enforce this ordinance and for the general purpose of sound and vibration abatement and control, the EPO/NCO shall have, in addition to any other authority vested in it, the power to:

4.2.1 STUDIES

Conduct, or cause to be conducted, research, monitoring, and other studies related to sound and vibration.

4.2.2 EDUCATION

(a) Conduct programs of public education regarding:

(1) The causes, effects and general methods of abatement and control of noise and vibration;

(2) The actions prohibited by this ordinance and the procedures for reporting violations;

(b) Encourage the participation of public interest groups in related public information efforts.

4.2.3 COORDINATION AND COOPERATION

(a) Coordinate the noise and vibration control activities of all municipal departments;

(b) Cooperate to the extent practicable with all appropriate State and Federal agencies;

(c) Cooperate or combine to the extent practicable with appropriate county and municipal agencies;

(d) Enter into contracts [with the approval of the (appropriate authority)] for the provision of technical and enforcement services.

4.2.4 REVIEW OF ACTIONS OF OTHER DEPARTMENTS

Request any other department or agency responsible for any proposed or final standard, regulation or similar action to consult on the advisability of revising the action, if there is reason to believe that the action is not consistent with this ordinance.

4.2.5 REVIEW OF PUBLIC AND PRIVATE PROJECTS

Review public and private projects, subject to mandatory review or approval by other departments, for compliance with this ordinance, if such projects are likely to cause sound or vibration in violation of this ordinance.

4.2.6 INSPECTIONS

(a) Upon presentation of proper credentials, enter and inspect any private property or place, and inspect any report or records at any reasonable time when granted permission by the owner, or by some other person with apparent authority to act for the owner. When permission is refused or cannot be obtained, a search warrant may be obtained from a court of competent jurisdiction upon showing of probable cause to believe that a violation of this ordinance may exist. Such inspection may include administration of any necessary tests.

[(b) Stop any motor vehicle, motorcycle, or motorboat operated on a public right-of-way, public space, or public waterway reasonably suspected of violating any provision of this ordinance, and issue a notice of violation or abatement order which may require the motor vehicle, motorcycle or motorboat to be inspected or tested as the EPO/NCO may reasonably require.]

4.2.7 RECORDS

Require the owner or operator of any commercial or industrial activity to establish and maintain records and make such reports as the EPO/NCO may reasonably prescribe.

4.2.8 MEASUREMENTS BY THE OWNER OR OPERATOR

Require the owner or operator of any commercial or industrial activity to measure the sound level of or the vibration from any source in accordance with the methods and procedures and at such locations and times as the EPO/NCO may reasonably prescribe and to furnish reports of the results of such measurements to the EPO/NCO. The EPO/NCO may require the measurements to be conducted in the presence of its enforcement officials.

4.2.9 PRODUCT PERFORMANCE STANDARD RECOMMENDATIONS

(a) Develop and recommend for promulgation (to the appropriate authority) provisions regulating the use and operation of any product, including the specification of maximum allowable sound emission levels of such product.

[(b) Develop and recommend for promulgation (to the appropriate authority) provisions prohibiting the sale of products which do not meet specified sound emission levels, where the sound level of the product is not regulated by the United States Environmental Protection Agency under Section 6 of the Noise Control Act of 1972.]

4.2.10 NOISE SENSITIVE ZONE RECOMMENDATIONS

Prepare recommendations, to be approved by (the appropriate authority), for the designation of noise sensitive zones which contain noise sensitive activities. Existing quiet zones shall be considered noise sensitive zones until otherwise designated. Noise sensitive activities include, but are not limited to, operations of schools, libraries open to the public, churches, hospitals, and nursing homes.

4.3 DUTIES OF (ENVIRONMENTAL PROTECTION)/(NOISE CONTROL) OFFICE(R)

In order to implement and enforce this ordinance effectively, the EPO/NCO shall within a reasonable time after the effective date of the ordinance:

4.3.1 STANDARDS, TESTING METHODS, AND PROCEDURES

Develop, [recommend to the appropriate authority,] and promulgate standards, testing methods and procedures.

4.3.2 INVESTIGATE AND PURSUE VIOLATIONS

In consonance with Section 4.2.6, Article XI, and other provisions of this ordinance, investigate and pursue possible violations of this ordinance.

4.3.3 DELEGATION OF AUTHORITY

Delegate functions, where appropriate under this ordinance, to personnel within the EPO/NCO and to other agencies or departments, [subject to approval of _____].

4.3.4 TRUCK ROUTES AND TRANSPORTATION PLANNING

(a) Study the existing transportation systems, such as truck routes within the community; determine areas with sensitivity to sound and vibration caused by transportation; recommend changes or modifications to transportation systems to minimize the sound and vibration impact on residential areas and noise sensitive zones.

(b) Assist in or review the total transportation planning of the community, including planning for new roads and highways, bus routes, airports, and other systems for public transportation, to ensure that the impact of sound and vibration receives adequate consideration.

4.3.5 CAPITAL IMPROVEMENT GUIDELINES

Establish noise assessment guidelines for the evaluation of proposed improvements for the capital improvements budget and program pursuant to Section 5.5. These guidelines shall assist in the determination of the relative priority of each improvement in terms of noise impact.

4.3.6 STATE AND FEDERAL LAWS AND REGULATIONS

(a) Prepare and publish [with the approval of _____] a list of those products manufactured to meet specified noise emission limits under Federal, State, or community law for which "tampering" enforcement will be conducted;

(b) Make recommendations for modifications or amendments to this ordinance to ensure consistency with all State and Federal laws and regulations.

[4.3.7] PLANNING TO ACHIEVE LONG TERM NOISE GOALS

[Develop a generalized sound level map of the (city/county), a long term plan for achieving quiet in the (city/county), and [with the approval of _____ _____ _____ ,] integrate this plan into the planning process of the (city/county).]

4.3.8 ADMINISTER GRANTS, FUNDS AND GIFTS

Administer noise program grants and other funds and gifts from public and private sources, including the State and Federal governments.

[4.3.9] PERIODIC REPORT

[Evaluate and report, every _____ year(s) following the effective date of this ordinance, on the effectiveness of the (city/county) noise control program and make recommendations for any legislative or budgetary changes necessary to improve the program. This report shall be made to the (Noise Control Advisory Board)/(appropriate authority) which may amend it after consultation with the EPO/NCO, and then submit it to the (appropriate authority), for approval.]

ARTICLE V DUTIES AND RESPONSIBILITIES OF OTHER DEPARTMENTS

5.1 DEPARTMENTAL ACTIONS

All departments and agencies shall, to the fullest extent consistent with other law, carry out their programs in such a manner as to further the policy of this ordinance.

5.2 DEPARTMENTAL COOPERATION

All departments and agencies shall cooperate with the EPO/NCO to the fullest extent in enforcing this ordinance.

5.3 DEPARTMENTAL COMPLIANCE WITH OTHER LAWS

All departments and agencies shall comply with Federal and State laws and regulations and the provisions and intent of this ordinance respecting the control and abatement of noise to the same extent that any person is subject to such laws and regulations.

5.4 PROJECT APPROVAL

All departments whose duty it is to review and approve new projects or changes to existing projects, that result, or may result, in the production of sound or vibration shall consult with the EPO/NCO prior to any such approval.

5.5 CONTRACTS

Any written contract, agreement, purchase order, or other instrument whereby the (city/county) is committed to the expenditure of _____ dollars or more in return for goods or services shall contain provisions requiring compliance with this ordinance.

5.6 LOW NOISE EMISSION PRODUCTS

Any product which has been certified by the Administrator of the United States Environmental Protection Agency pursuant to Section 15 of the Noise Control Act as a low noise emission product and which he determines is suitable for use as a substitute, shall be procured by the city/county and used in preference to any other product, provided that such certified product is reasonably available and has a procurement cost which is not more than (125) percentum of the least expensive type of product for which it is certified as a substitute.

5.7 CAPITAL IMPROVEMENT PROGRAM

All departments responsible for a capital improvements budget and program shall prepare an analysis of the noise impact of any proposed improvements in accordance with noise assessment guidelines established by the EPO/NCO pursuant to Section 4.3.5. Proposed capital improvements include land acquisition, building construction, highway improvements, and utilities and fixed equipment installation.

ARTICLE VI PROHIBITED ACTS

6.1 NOISE DISTURBANCES PROHIBITED

No person shall unreasonably make, continue, or cause to be made or continued, any noise disturbance. Non-commercial public speaking and public assembly activities conducted on any public space or public right-of-way shall be exempt from the operation of this Section.

6.2 SPECIFIC PROHIBITIONS

The following acts, and the causing thereof, are declared to be in violation of this ordinance:

6.2.1 RADIOS, TELEVISION SETS, MUSICAL INSTRUMENTS AND SIMILAR DEVICES

Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound:

(a) Between the hours of _____ p.m. and _____a.m. the following day in such a manner as to create a noise disturbance across a real property boundary or within a noise sensitive zone, [except for activities open to the public and for which a permit has been issued by (appropriate authority) according to criteria set forth in _____];

(b) In such a manner as to create a noise disturbance at 50 feet (15 meters) from such device, when operated in or on a motor vehicle on a public right-of-way or public space, or in a boat on public waters;

(c) In such a manner as to create a noise disturbance to any person other than the operator of the device, when operated by any passenger on a common carrier;

(d) This section shall not apply to non-commercial spoken language covered under Section 6.2.2.

6.2.2 LOUDSPEAKERS/PUBLIC ADDRESS SYSTEMS

(a) Using or operating for any noncommercial purpose any loudspeaker, public address system, or similar device between the hours of 10:00 p.m. and 8:00 a.m. the following day, such that the sound therefrom creates a noise disturbance across a residential real property boundary or within a noise sensitive zone.

(b) Using or operating for any commercial purpose any loudspeaker, public address system, or similar device (1) such that the sound therefrom creates a noise disturbance across a real property boundary or within a noise sensitive zone; or (2) between the hours of _____ p.m. and _____a.m. the following day on a public right-of-way or public space.

6.2.3 STREET SALES

Offering for sale or selling anything by shouting or outcry within any residential or commercial area of the (city/county) [except by permit issued by (appropriate authority) according to criteria set forth in _____ and/or except between the hours of _____ a.m. and _____ p.m.].

6.2.4 ANIMALS AND BIRDS

Owning, possessing or harboring any animal or bird which frequently or for continued duration, howls, barks, meows, squawks, or makes other sounds which create a noise disturbance across a residential real property boundary or within a noise sensitive zone. [This provision shall not apply to public zoos.]

6.2.5 LOADING AND UNLOADING

Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans, or similar objects between the hours of _____ p.m. and _____ a.m. the following day in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise sensitive zone.

6.2.6 CONSTRUCTION

Operating or permitting the operation of any tools or equipment used in construction, drilling, or demolition work:

(a) Between the hours of _____ p.m. and _____ a.m. the following day on weekdays or at any time on (Sundays/weekends) or holidays, such that the sound therefrom creates a noise disturbance across a residential real property boundary or within a noise sensitive zone, except for emergency work of public service utilities or by special variance issued pursuant to Section 7.2;

(b) At any other time such that the sound level at or across a real property boundary exceeds an L_{eq} of _____ dBA for the daily period of operation.

(c) This section shall not apply to the use of domestic power tools subject to Section 6.2.17.

6.2.7 VEHICLE OR MOTORBOAT REPAIRS AND TESTING

Repairing, rebuilding, modifying, or testing any motor vehicle, motorcycle, or motorboat in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise sensitive zone.

6.2.8 AIRPORT AND AIRCRAFT OPERATIONS

(a) The EPO/NCO shall consult with the airport proprietor to recommend changes in airport operations to minimize any noise disturbance which the airport owner may have authority to control in its capacity as proprietor.

(b) Nothing in this section shall be construed to prohibit, restrict, penalize, enjoin, or in any manner regulate the movement of aircraft which are in all respects conducted in accordance with, or pursuant to, applicable Federal laws or regulations.

6.2.9 PLACES OF PUBLIC ENTERTAINMENT

Operating, playing, or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound in any place of public entertainment at a sound level greater than _____dBA as read by the slow response on a sound level meter at any point that is normally occupied by a customer, unless a conspicuous and legible sign is located outside such place, near each public entrance, stating "WARNING: SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT."

6.2.10 EXPLOSIVES, FIREARMS, AND SIMILAR DEVICES

The use or firing of explosives, firearms, or similar devices which create impulsive sound so as to cause a noise disturbance across a real property boundary or on a public space or right-of-way, without first obtaining a special variance issued pursuant to Section 7.2. [Such permit need not be obtained for licensed game-hunting activities on property where such activities are authorized.]

6.2.11 POWERED MODEL VEHICLES

Operating or permitting the operation of powered model vehicles so as to create a noise disturbance across a residential real property boundary, in a public space or within a noise sensitive zone between the hours of _____p.m. and _____ a.m. the following day. Maximum sound levels in a public space during the permitted period of operation shall conform to those set forth for residential land use in Table 1 of Section 8.1 and shall be measured at a distance of _____feet (meters) from any point on the path of the vehicle. Maximum sound levels for residential property and noise sensitive zones, during the permitted period of operation, shall be governed by Section 8.1 and Section 6.2.16, respectively.

6.2.12 VIBRATION

Operating or permitting the operation of any device that creates vibration which is above the vibration perception threshold of an individual at or beyond the property boundary of the source if on private property or at _____ feet (meters) from the source if on a public space or public right-of-way. For the purposes of this section, "vibration perception threshold" means the minimum ground- or structure-borne vibrational motion necessary to cause a normal person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.

6.2.13 STATIONARY NON-EMERGENCY SIGNALING DEVICES

(a) Sounding or permitting the sounding of any [electronically-amplified] signal from any stationary bell, chime, siren, whistle, or similar device, intended primarily for nonemergency purposes, from any place, [for more than _____minutes in any hourly period.]

[(b) Devices used in conjunction with places of religious worship shall be exempt from the operation of this provision.]

[(c) Sound sources covered by this provision and not exempted under subsection (b) shall be exempted by (appropriate authority) using criteria set forth in Section 7.2.]

6.2.14 EMERGENCY SIGNALING DEVICES

(a) The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle or similar stationary emergency signaling device, except for emergency purposes or for testing, as provided in subsection (b).

(b) (i) Testing of a stationary emergency signaling device shall occur at the same time of day each time such a test is performed, but not before _____ a.m. or after _____ p.m. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed _____ seconds.

(ii) Testing of the complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device, shall not occur more than once in each calendar month. Such testing shall not occur before _____a.m. or after _____p.m. The time limit specified in subsection (i) shall not apply to such complete system testing.

[[(c) Sounding or permitting the sounding of any exterior burglar [or fire] alarm or any motor vehicle burglar alarm unless such alarm is automatically terminated within _____ minutes of activation. [This section shall not be interpreted to apply to _____ alarms.]

6.2.15 MOTORBOATS

Operating or permitting the operation of any motorboat in any lake, river, stream, or other waterway in such a manner as to exceed a sound level of _____ dBA at 50 feet (15 meters) or the nearest shoreline, whichever distance is less.

6.2.16 NOISE SENSITIVE ZONES

(a) Creating or causing the creation of any sound within any noise sensitive zone designated pursuant to Section 4.2.10, so as to disrupt the activities normally conducted within the zone, provided that conspicuous signs are displayed indicating the presence of the zone; or

(b) Creating or causing the creation of any sound within any noise sensitive zone, designated pursuant to Section 4.2.10, containing a hospital, nursing home, or similar activity, so as to interfere with the functions of such activity or disturb or annoy the patients in the activity, provided that conspicuous signs are displayed indicating the presence of the zone.

6.2.17 DOMESTIC POWER TOOLS

Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, snowblower, or similar device used outdoors in residential areas between the hours of _____ p.m. and _____a.m. the following day so as to cause a noise disturbance across a residential real property boundary.

6.2.18 TAMPERING

The following acts or the causing thereof are prohibited:

(a) The removal or rendering inoperative by any person other than for purposes of maintenance, repair, or replacement, of any noise control device or element of design or noise label of any product identified under Section 4.3.6. The EPO/NCO may, by regulation, list those acts which constitute violation of this provision.

[(b) The (intentional) removing or rendering inaccurate or inoperative of any sound monitoring instrument or device positioned by or for the EPO/NCO, provided such device or the immediate area is clearly labeled, in accordance with EPO/NCO regulations, to warn of the potential illegality.]

(c) The use of a product, identified under Section 4.3.6, which has had a noise control device or element of design or noise label removed or rendered inoperative, with knowledge that such action has occurred.

ARTICLE VII EXCEPTIONS AND VARIANCES

7.1 EMERGENCY EXCEPTION

The provisions of this ordinance shall not apply to (a) the emission of sound for the purpose of alerting persons to the existence of an emergency, or (b) the emission of sound in the performance of emergency work.

7.2 SPECIAL VARIANCES

(a) The (EPO/NCO)/(Hearing Board) shall have the authority, consistent with this section, to grant special variances which may be requested pursuant to Sections 6.2.6 (Construction) and 6.2.10 (Explosives, Firearms, and Similar Devices).

(b) Any person seeking a special variance pursuant to this section shall file an application with the (EPO/NCO)/(Hearing Board). The application shall contain information which demonstrates that bringing the source of sound or activity for which the special variance is sought into compliance with this ordinance would constitute an unreasonable hardship on the applicant, on the community, or on other persons. [Notice of an application for a special variance shall be published according to (jurisdictional procedure).] Any individual who claims to be adversely affected by allowance of the special variance may file a statement with the (EPO/NCO)/(Hearing Board) containing any information to support his claim. If the (EPO/NCO)/(Hearing Board) finds that a sufficient controversy exists regarding an application, a public hearing may be held.

(c) In determining whether to grant or deny the application, the (EPO/NCO)/(Hearing Board) shall balance the hardship to the applicant, the community, and other persons of not granting the special variance against the adverse impact on the health, safety, and welfare of persons

affected, the adverse impact on property affected, and any other adverse impacts of granting the special variance. Applicants for special variances and persons contesting special variances may be required to submit any information the (EPO/NCO)/(Hearing Board) may reasonably require. In granting or denying an application, the (EPO/NCO)/(Hearing Board) shall place on public file a copy of the decision and the reasons for denying or granting the special variance.

(d) Special variances shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The special variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the special variance shall terminate it and subject the person holding it to those provisions of this ordinance regulating the source of sound or activity for which the special variance was granted.

(e) Application for extension of time limits specified in special variances or for modification of other substantial conditions shall be treated like applications for initial special variances under subsection (b).

(f) The (EPO/NCO)/(Hearing Board) may issue guidelines [approved by _____] defining the procedures to be followed in applying for a special variance and the criteria to be considered in deciding whether to grant a special variance.

7.3 VARIANCES FOR TIME TO COMPLY

(a) Within _____days following the effective date of this ordinance, the owner of any commercial or industrial source of sound may apply to the (EPO/NCO)/(Hearing Board) for a variance in time to comply with Section 6.2.12 (Vibration) or Article VIII. The (EPO/NCO)/(Hearing Board) shall have the authority, consistent with this section, to grant a variance, not to exceed _____days from the effective date of this ordinance.

(b) Any person seeking a variance in time to comply shall file an application with the (EPO/NCO)/(Hearing Board). The application shall contain information which demonstrates that bringing the source of sound or activity for which the variance is sought into compliance with this ordinance prior to the date requested in the application would constitute an unreasonable hardship on the applicant, on the community, or on other persons. [Notice of an application for a variance in time to comply shall be published according to (jurisdictional procedure).] Any individual who claims to be adversely affected by allowance of the variance in time to comply may file a statement with the (EPO/

NCO)/(Hearing Board) containing any information to support his claim. If the (EPO/NCO)/(Hearing Board) finds that a sufficient controversy exists regarding an application, a public hearing may be held.

(c) In determining whether to grant or deny the application, the (EPO/NCO)/(Hearing Board) shall balance the hardship to the applicant, the community, and other persons of not granting the variance in time to comply against the adverse impact on health, safety, and welfare of persons affected, the adverse impact on property affected, and any other adverse impacts of granting the variance. Applicants for variances in time to comply and persons contesting variances may be required to submit any information the (EPO/NCO)/(Hearing Board) may reasonably require. In granting or denying an application, the (EPO/NCO)/(Hearing Board) shall place on public file a copy of the decision and the reasons for denying or granting the variance in time to comply.

(d) Variances in time to comply shall be granted to the applicant containing all necessary conditions, including a schedule for achieving compliance. The variance in time to comply shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the variance shall terminate the variance and subject the person holding it to those provisions of this ordinance for which the variance was granted.

(e) Application for extension of time limits specified in variances in time to comply or for modification of other substantial conditions shall be treated like applications for initial variances under subsection (b), except that the (EPO/NCO)/(Hearing Board) must find that the need for the extension or modification clearly outweighs any adverse impacts of granting the extension or modification.

(f) The (EPO/NCO)/(Hearing Board) may issue guidelines [approved by _____] defining the procedures to be followed in applying for a variance in time to comply and the criteria to be considered in deciding whether to grant a variance.

7.4 APPEALS

Appeals of an adverse decision of the (EPO/NCO)/(Hearing Board) shall be made to the (appropriate court of law). Review of the court shall be (*de novo*)/(limited to whether the decision is supported by substantial evidence)/(as specified by the _____).

ARTICLE VIII SOUND LEVELS BY RECEIVING LAND USE

8.1 MAXIMUM PERMISSIBLE SOUND LEVELS BY RECEIVING LAND USE

No person shall operate or cause to be operated on private property any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category in Table 1 when measured at or within the property boundary of the receiving land use.

Table 1. Sound Levels by Receiving Land Use

Receiving land-use category	Time	Sound level limit, dBA
R-1, R-2, etc.	(A) a.m. – (B) p.m.	L_1
(Residential, public space, open space, or institutional)	(B) p.m. – (A) a.m.	L_2
C-1, C-2, etc. B-1, B-2, etc. (Commercial or business)	At all times	L_3
M-1, M-2, etc. (Industrial, agricultural)	At all times	L_4

8.2 CORRECTION FOR CHARACTER OF SOUND

For any source of sound which emits a pure tone or impulsive sound, the maximum sound level limits set forth in Section 8.1 shall be reduced by _____ dBA.

8.3 EXEMPTIONS

The provisions of this article shall not apply to:

(a) Activities covered by the following Sections: 6.2.6 (Construction), 6.2.8 (Aircraft and Airport Operations), 6.2.10 (Explosives, Firearms, and Similar Devices), 6.2.13 (Stationary Nonemergency

Signaling Devices), 6.2.14 (Emergency Signaling Devices), 6.2.15 (Motorboats), 6.2.17 (Domestic Power Tools), 9.1.3 (Refuse Collection Vehicles), 9.2 (Recreational Motorized Vehicles Operating Off Public Rights-of-Way);

(b) The unamplified human voice;

(c) Interstate railway locomotives and cars; and

[(d) (Non-stationary farming equipment)/(all agricultural activities)]

ARTICLE IX MOTOR VEHICLE MAXIMUM SOUND LEVELS

9.1 MOTOR VEHICLES AND MOTORCYCLES ON PUBLIC RIGHTS-OF-WAY

No person shall operate or cause to be operated a public or private motor vehicle or motorcycle on a public right-of-way at any time in such a manner that the sound level emitted by the motor vehicle or motorcycle exceeds the level set forth in Table 2.

Table 2. Motor Vehicle and Motorcycle Sound Limits
(Measured at 50 Feet or 15 Meters)

Vehicle class	Sound level in dBA		
	Speed limit 35 MPH or less	Speed limit over 35 MPH	Stationary run-up
Motor carrier vehicle engaged in interstate commerce of GVWR or GCWR of 10,000 lbs. or more	86	90	88
All other motor vehicles of GVWR or GCWR of 10,000 lbs. or more	A	B	–
Any motorcycle	C	D	–
Any other motor vehicle or any combination of vehicles towed by any motor vehicle	E	F	–

9.1.1 ADEQUATE MUFFLERS OR SOUND DISSIPATIVE DEVICES

(a) No person shall operate or cause to be operated any motor vehicle or motorcycle not equipped with a muffler or other sound dissipative device in good working order and in constant operation;

(b) No person shall remove or render inoperative, or cause to be removed or rendered inoperative, other than for purposes of maintenance, repair, or replacement, any muffler or sound dissipative device on a motor vehicle or motorcycle;

(c) The EPO/NCO may, by (guidelines) (regulations subject to approval by _____), list those acts which constitute violation of this section.

9.1.2 MOTOR VEHICLE HORNS AND SIGNALING DEVICES

The following acts and the causing thereof are declared to be in violation of this ordinance:

(a) The sounding of any horn or other auditory signaling device on or in any motor vehicle or motorcycle on any public right-of-way or public space, except (as a warning of danger)/as provided in the vehicle code).

[(b) The sounding of any horn or other auditory signaling device which produces a sound level in excess of _____dBA at _____feet (meters).

9.1.3 REFUSE COLLECTION VEHICLES

No person shall:

(a) On or after (2 years) following the effective date of this ordinance, operate or permit the operation of the compacting mechanism of any motor vehicle which compacts refuse and which creates, during the compacting cycle, a sound level in excess of _____ dBA when measured at _____ feet (meters) from any point on the vehicle;

(b) Operate or permit the operation of the compacting mechanism of any motor vehicle which compacts refuse, between the hours of _____p.m. and _____ a.m. the following day in a residential area or noise sensitive zone;

(c) Collect refuse with a refuse collection vehicle between the hours of _____p.m. and _____ a.m. the following day in a residential area or noise sensitive zone.

9.1.4 STANDING MOTOR VEHICLES

No person shall operate or permit the operation of any motor vehicle with a gross vehicle weight rating (GVWR) in excess of ten thousand (10,000) pounds, or any auxiliary equipment attached to such a vehicle, for a period longer than _____minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion, on a public right-of-way or public space within 150 feet (46 meters) of a residential area or designated noise sensitive zone, between the hours of _____p.m. and _____a.m. the following day.

9.2 RECREATIONAL MOTORIZED VEHICLES OPERATING OFF PUBLIC RIGHTS-OF-WAY

(a) [Except as permitted in subsection (b) or (c),] no person shall operate or cause to be operated any recreational motorized vehicle off a public right-of-way in such a manner that the sound level emitted therefrom exceeds the limits set forth in Table 3 at a distance of 50 feet (15 meters) or more from the path of the vehicle when operated on a public space or at or across the boundary of private property when operated on private property. This section shall apply to all recreational motorized vehicles, whether or not duly licensed and registered, including, but not limited to, commercial or non-commercial racing vehicles, motorcycles, go-carts, snowmobiles, amphibious craft, campers and dune buggies, but not including motorboats.

[(b) Permits for motor vehicle racing events may be obtained from (appropriate authority) according to procedures and criteria set forth in _____.]

[(c) Special variances for _____ may be obtained from (appropriate authority) according to procedure and criteria set forth in _____ _____.]

Table 3. Recreational Motorized Vehicle Sound Limits
(Measured at 50 Feet or 15 Meters)

Vehicle type	Sound level, dBA
Snowmobile	A
Motorcycle	B
Any other vehicle	C

ARTICLE X LAND USE

10.1 GENERAL PROVISIONS

(a) No owner of any land shall commence or cause to be commenced construction of any structure covered by Sections 10.2, 10.3, 10.5 or 10.6 unless approved by the EPO/NCO as provided in this Article.

(b) Any application for approval required by this Article shall be submitted in writing to the EPO/NCO, with a copy to the (Buildings Department)/(Appropriate Department), by the owner of the land on which the structure is proposed to be constructed and shall contain the following information:

(1) identification of the land on which the construction is proposed;

(2) the section of this Article under which approval is requested;

(3) information and data supporting the claim that the appropriate requirements will be met;

(4) any other information which the EPO/NCO may reasonably require.

10.2 CONSTRUCTION RESTRICTIONS FOR HABITABLE AND INSTITUTIONAL STRUCTURES

(a) Except as provided in subsection (c), no new single family residential structure shall be approved for construction (excluding substantial repair or alteration) if the exterior day-night average sound level (L_{dn}) anywhere on the site of the proposed structure is projected to be in excess of _____ dBA within _____.years following the estimated completion date of the structure.

(b) Except as provided in subsection (c), no new multiple-family residence, dormitory, mobile home park, transient lodging, school, hospital, nursing home or similar structure, or substantial modification of such existing structure, shall be approved for construction if the exterior day-night average sound level (L_{dn}) anywhere on the site of the proposed structure is projected to be in excess of ____dBA within ____years following the estimated completion date of the structure or modification.

(c) Construction otherwise prohibited pursuant to subsections (a) or (b) shall be allowed if the exterior day-night average sound level (L_{dn}) on the site of the proposed structure is projected not to be in excess of

_____dBA for _____years following construction, provided that there is incorporated into the design and construction of the structure such sound attenuation measures as are necessary to reduce the maximum interior day-night average sound level (L_{dn}) to _____ dBA. Subsections (a) and (b) shall not apply to any site development plan or its equivalent on which four or fewer dwelling units are to be constructed.

(d) Prior to issuance of any occupancy permit for any structure regulated pursuant to subsection (c), the owner of the structure shall submit for EPO/NCO review the report of an independent testing agency [approved by the EPO/NCO] certifying that sound attenuation measures have been properly incorporated into the design and construction of the structure and that the interior L_{dn} meets the criterion specified in subsection (c). Such report shall contain the results of simultaneous measurements of the exterior and interior day-night average sound levels for a representative sample of locations.

(e) The EPO/NCO may conduct such inspections and measurements as are necessary to ensure the accuracy of any report submitted pursuant to subsection (d) and to ascertain compliance with this section. These may include on-site inspections by a certified independent testing agency during specified periods of construction.

10.3 RECREATIONAL AREA RESTRICTIONS

(a) Except as provided in subsections (b), (c), and (d) no land shall be designated or approved for construction or use as a public or private exterior recreational area, including, but not limited to, childrens' playgrounds, outdoor theaters and amphitheaters, picnic grounds, tennis courts and swimming pools, if the exterior day-night average sound level (L_{dn}) anywhere on the site of the proposed recreational area is projected to be in the excess of _____dBA within _____ years following the construction or designation of the site.

(b) This section shall not apply to the designation or approval of any green belt or open space in any area in which the L_{dn} exceeds the level specified in subsection (a) regardless of whether such green belt or open space is open to public use, provided that no recreational improvement or facility is constructed thereon.

(c) Designation or approval of exterior recreational areas otherwise prohibited under subsection (a) shall be allowed if the L_{dn} specified in that subsection can be achieved by appropriate means of sound attenuation, such as berms, barriers, or buildings, at the perimeter of or elsewhere on the site.

(d) No new interior recreational facility, including, but not limited to, gymnasiums, ice or roller skating rinks, indoor swimming pools, and tennis courts, shall be approved for construction if the exterior day-night average sound level anywhere on the site is projected to be in excess of _____ dBA within _____ years following the estimated date of completion of the structure unless there is incorporated into the design and construction of the structure such sound attenuation measures as are necessary to reduce the maximum interior day-night average sound level (L_{dn}) to _____ dBA.

10.4 SITE STUDY REQUIREMENT

(a) If the EPO/NCO has reason to believe that a full report is necessary to determine whether a proposed project is prohibited under Section 10.1, such report shall be made by the applicant prior to approval of any subdivision, zoning, or building permit application. (If a full report has not been made and the applicant believes the project was wrongfully prohibited under Section 10.1, he may file a full report within _____ days of the EPO/NCO decision and request reconsideration by the EPO/NCO). A full report shall contain the following information and any other information which the EPO/NCO may reasonably require:

(1) the existing day-night average sound levels (L_{dn}), including identification of the major sources of sound, for a representative sample of locations, measured in accordance with guidelines published by the EPO/NCO;

(2) any projected or proposed new or expanded sources of sound which may affect exposure of the site during _____ years following completion of the project and the projected future L_{dn} at the site resulting from these new or expanded sources;

(3) where applicable, plans for sound attenuation measures on the site and/or of the structure proposed to be built and the amount of sound attenuation anticipated as a result of these measures.

(b) In determining whether an applicant should be required to submit a full report pursuant to subsection (a), the EPO/NCO shall consider Circular 1390.2 (Noise Abatement and Control) and other publications of the U.S. Department of Housing and Urban Development.

10.5 COMMERCIAL AND INDUSTRIAL CONSTRUCTION

No new or substantially modified structure on land used or zoned as commercial or industrial shall be approved for construction unless the owner or developer of such land has demonstrated, in accordance with guidelines published by the EPO/NCO, that the completed structure and the activities associated with and on the same property as the structure, will comply with the provisions of Article VIII at the time for initial full-scale operation of such activities.

10.6 SOUND FROM NEW TRANSPORTATION SYSTEMS IN RESIDENTIAL AREAS OR NOISE SENSITIVE ZONES

No plans for construction of new transportation systems or expansion of the capacity of existing transportation systems will be approved for location in or near residential areas or noise sensitive zones, regardless of the source of project funds, unless such plan includes all control measures necessary to ensure that the projected day-night average sound level (L_{dn}) due to the operation of the transportation system does not exceed _____ dBA at any point on residential property within _____ years after the expected completion of the project.

10.7 EQUIVALENT MEASUREMENT SYSTEMS

For the purposes of this Article, all measurements and designations of sound levels shall be expressed in day-night average sound levels (L_{dn}) or in any other equivalent measurement system the EPO/NCO may reasonably approve.

10.8 ZONING ORDINANCE OR COMPREHENSIVE PLAN

(a) No proposed zoning ordinance or comprehensive plan shall be approved unless such plan includes a sound analysis which (1) identifies existing and projected noise sources and associated sound levels for _____ years in and around the area under consideration, and (2) ensures usage of adequate measures to avoid violation of any provision of this ordinance.

(b) No zoning change application shall be approved unless the site feasibility study submitted, as required by the (Zoning Board of Appeals)/(Planning Commission), contains an analysis which shows (1) the impact of existing and projected noise sources for _____ years on the intended use, and (2) the projected noise impact of the intended use, when completed, on surrounding areas. Such site study shall ensure the use of adequate measures to avoid violation of any provision of this ordinance.

10.9 TRUTH IN SELLING OR RENTING

No person shall sell or rent, or cause to be sold or rented, any structure or property to be used for human habitation, where the structure or property is exposed to sound levels regularly in excess of (an L_{eq} in any hour of _____ dBA)/(an L_{dn} of _____ dBA), without making full written disclosure to all potential buyers or renters of the existence of such sound levels and of the nature of the sources. The EPO/NCO shall develop a standard format for written disclosures, which shall include information on the effects of noise on human health and welfare.

10.10 APPEALS

Any applicant may appeal an adverse decision by the EPO/NCO under this Article, in the (appropriate court of law), on the grounds that the EPO/NCO disapproval was arbitrary, capricious, or unreasonable.

ARTICLE XI ENFORCEMENT

11.1 PENALTIES

(a) Any person who violates any provision of this ordinance shall be fined for each offense not more than _____ dollars.

(b) Any person who willfully or knowingly violates any provision of this ordinance shall be fined for each offense a sum of not less than _____ dollars and not more than _____ dollars.

(c) Each day of violation of any provision of this ordinance shall constitute a separate offense.

[11.2 ABATEMENT ORDERS

(a) Except as provided in subsection (b), in lieu of issuing a notice of violation as provided for in Section 11.3, the EPO/NCO or other (agency/official) responsible for enforcement of any provision of this ordinance may issue an order requiring abatement of any source of sound or vibration alleged to be in violation of this ordinance within a reasonable time period and according to guidelines [to be approved by appropriate authority] which the EPO/NCO may prescribe.

(b) An abatement order shall not be issued: (1) for any violation covered by Section 11.1 (b); (2) for any violation of _____; or, (3) when the EPO/NCO or other enforcement (agency/official) has reason to believe that there will not be compliance with the abatement order.]

11.3 NOTICE OF VIOLATION

[Except where a person is acting in good faith to comply with an abatement order issued pursuant to Section 11.2 (a)], violation of any provision of this ordinance shall be cause for a (notice of violation)/(summons)/(complaint)/(information or indictment) to be issued by the EPO/NCO or other responsible enforcement (agency official) according to procedures (which the EPO/NCO may prescribe)/(set forth in _____).

11.4 IMMEDIATE THREATS TO HEALTH AND WELFARE

(a) The EPO/NCO shall order an immediate halt to any sound which exposes any person, except those excluded pursuant to subsection (b), to continuous sound levels in excess of those shown in Table 4 or to impulsive sound levels in excess of those shown in Table 5. Within _____days following issuance of such an order, the EPO/NCO shall apply to the appropriate court for an injunction to replace the order.

(b) No order pursuant to subsection (a) shall be issued if the only persons exposed to sound levels in excess of those listed in Tables 4 and 5 are are exposed as a result of (1) trespass; (2) invitation upon private property by the person causing or permitting the sound; or (3) employment ment by the person or a contractor of the person causing or permitting the sound.

(c) Any person subject to an order issued pursuant to subsection (a) shall comply with such order until (1) the sound is brought into compliance with the order, as determined by the EPO/NCO; or (2) a judicial order has superseded the EPO/NCO order.

(d) Any person who violates an order issued pursuant to this section shall, for each day of violation, be fined not less than _____ dollars nor more than _____dollars.

11.5 CITIZEN SUITS

(a) Any person, other than persons responsible for enforcement of this ordinance, may commence a civil action on his own behalf (1) against any person who is alleged to be in violation of any provision of this ordinance set forth in Table 6 below or (2) against the EPO/NCO where there is alleged a failure of the EPO/NCO to perform any act under this ordinance which is not discretionary. The _____ court shall have jurisdiction, without regard to the amount in controversy, to grant such relief as it deems necessary.

Table 4. Continuous Sound Levels which Pose an Immediate Threat to Health and Welfare (Measured at Receiver)*

Sound level limit (dBA)	Duration
90	24 hours
93	12 hours
96	6 hours
99	3 hours
102	1.5 hours
105	45 minutes
108	22 minutes

*Use equal energy time-intensity trade-off if level varies; find energy equivalent over 24 hours.

Table 5. Impulsive Sound Levels which Pose an Immediate Threat to Health and Welfare (Measured at Receiver)*

Sound level limit (dB)	Number of repetitions per 24 hour period
145	1
135	10
125	100

Table 6. Provisions Under Which Civil Actions May Be Commenced

6.2.1 (a)	(Radios, Television Sets, Musical Instruments and Similar Devices)
6.2.2	(Loudspeakers/Public Address Systems)
6.2.3	(Street Sales)
6.2.5	(Loading and Unloading)
6.2.6	(Construction)
6.2.7	(Vehicle or Motorboat Repairs and Testing)
6.2.9	(Places of Public Entertainment)
6.2.10	(Explosives, Firearms, and Similar Devices)
6.2.11	(Powered Model Vehicles)
6.2.12	(Vibration)
[6.2.13]	(Stationary, Non-Emergency Signaling Devices)
6.2.14	(Emergency Signaling Devices)
6.2.15	(Motorboats)
6.2.17	(Domestic Power Tools)
6.2.18	(Tampering)
8.1	(Maximum Permissible Sound Levels by Receiving Land Use)
9.1.3	(Refuse Collection Vehicles)
9.1.4	(Standing Motor Vehicles)
9.2 (b)	(Motor Vehicle Racing Events)
9.2.1 (b)	(Motor Vehicle Horns and Signaling Devices)
10.9	(Truth in Selling or Renting)

(b) No action may be commenced

(1) under subsection (a)(1)

(A) prior to _____ days after the plaintiff has given notice of the alleged violation to the EPO/NCO [and to the alleged violator] of such violation, or

(B) if the EPO/NCO has commenced and is diligently prosecuting an action against the alleged violator with respect to such violation, [but in such action any affected person may intervene as a matter of right], or

(2) under subsection (a)(2), prior to _____ days after the plaintiff has given notice to the EPO/NCO that he will commence such action. Notice under this subsection shall be given in a manner prescribed by the EPO/NCO.

(c) In any action under this section, the EPO/NCO, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a), may at its discretion award the costs of litigation to any party.

11.6 OTHER REMEDIES

No provision of this ordinance shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this ordinance or from other law.

11.7 SEVERABILITY

If any provision of this ordinance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

11.8 EFFECTIVE DATE

This law/ordinance shall take effect on _____.